

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6412 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

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RAMI RAMANLAL SOMNATH

Versus

URBAN LAND TRIBUNAL & EX- OFFICIO

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Appearance:

Kum. V.P.Shah, Advocate, for the Petitioners.

Shri A.G.Uraizee, Assistant Government Pleader, for the Respondents.

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 13/12/96

ORAL JUDGEMENT

The order passed by the Competent Authority at Ahmedabad (respondent No.2 herein) on 17th July 1986 under Section 8 (4) of the Urban Land (Ceiling and

Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No.1 herein) on 7th March 1989 in Appeal No.Ahmedabad-179 of 1987 is under challenge in this petition under Article 226 of the Constitution of India. By his impugned order, respondent No.2 declared the holding of the petitioners to be in excess of the ceiling limit by in all 10231.35 square metres.

2. The facts giving rise to this petition move in a narrow compass. Petitioner No.1 filed his declaration in the prescribed form under Section 6 (1) of the Act with respect to his holding by and on behalf of the joint Hindu family within the urban agglomeration of Ahmedabad. It was duly processed by respondent No.2. After observing the necessary formalities under Section 8 of the Act, by his order passed under sub-section (4) thereof on 17th July 1986, respondent No.2 declared the combined holding of the petitioners to be in excess of the ceiling limit in all by 10231.35 square metres. Its copy is at Annexure-B to this petition. That aggrieved petitioner No.1 as the declarant. He carried the matter in appeal before respondent No.1 under Section 33 of the Act. It came to be registered as Appeal No.Ahmedabad-179 of 1987. By the order passed on 7th March 1989 in the aforesaid appeal, respondent No.1 dismissed it. Its copy is at Annexure-C to this petition. The aggrieved petitioners have thereupon approached this court by means of this petition under Article 226 of the Constitution of India for questioning the correctness of the order at Annexure-B to this petition as affirmed in appeal by the appellate order at Annexure-C to this petition.

3. Learned Advocate Kum. Shah for the petitioners is right in her submission that the constructed properties could not have been included in the holding of the petitioners in view of the ruling of the Supreme Court in the case MEERA GUPTA v. STATE OF WEST BENGAL reported in AIR 1992 Supreme Court at page 1567. It transpires from the impugned order at Annexure-B to this petition that one house bearing municipal census No.105/612 admeasuring 71 square metres has been included in the holding of the petitioners as declared by petitioner No.1 in his declaration. That is certainly contrary to the aforesaid binding ruling of the Supreme Court. That property deserves to be excluded from the holding of the petitioners.

4. One property bearing final plot No.484 (survey No.253/2) admeasuring 452 square metres houses a temple in it. Its existence prior to coming into force of the

Act is practically not in dispute. On record is produced Form No.B of Town Planning Scheme No.21 (Ambawadi) in Ahmedabad. Its copy is at Annexure-E to this petition. This town planning scheme appears to have been finalised some time prior to 7th April 1970. It therefore stands to reason that the temple property in a constructed form was in existence prior to coming into force of the Act. It transpires from Form B at Annexure-E to this petition that this temple property was exempted from contribution under the relevant Town Planning Act. No action appears to have been taken so far for its demolition.

5. In this connection a reference deserves to be made to the ruling of this court in the case of JAYANT PAPER MILLS LTD. v. STATE OF GUJARAT reported in 1995 (2) Gujarat Law Herald at page 1058. In that case, some constructed properties in existence prior to coming into force of the Act were included in the holding of the land owner on the ground that sanctioned plans for construction thereof were not produced. The buildings were found to be old. In that context, it has been held in para 5 of the aforesaid ruling:

"In case of an old building where the formal sanction order is not forthcoming, there can be evidence which may show that municipal taxes were paid to the local authority over a long period prior to the appointed day, that drainage and services were provided to the built-up property by the local authority and that the building has existed prior to the appointed day for a very long time coupled with the fact that over a very long period the local authority has not taken any action on the ground that the construction was unauthorised and has treated it as authorised."

The aforesaid observations made by this court are very pertinent. Sitting as a single Judge, they are binding to me. Even otherwise, I am in respectful agreement therewith. It is nobody's case that there was any attempt on the part of any local authority or any other authority empowered to do so to demolish the temple property on the ground of its unauthorised construction or existence. That temple property shall have to be excluded from the holding of the petitioners in view of the aforesaid ruling of this court in the case of JAYANT PAPER MILLS (supra).

6. The real bone of contention in the present petition is with respect to existence of hutments in three parcels of land bearing final plots Nos.490 (survey

Nos.169, 170/1-2-3), 483 (survey No.163) and 491 (survey No.168/2). All these lands are situated at Paldi. It was the case of the petitioners before respondent No.2 herein that the hutments were in existence much prior to coming into force of the Act. It is brought to the notice of this court that these hutments are in occupation of tenants and the list of tenants is produced at Annexure-J to this petition. The petitioners could not produce any plans duly sanctioned by any local authority for raising hutments on the aforesaid parcels of land. Respondent No.2 therefore did not believe the case of the petitioners about their existence prior to coming into force of the Act.

7. Learned Advocate Kum.Shah for the petitioners has submitted that the hutments were subjected to municipal taxation much prior to coming into force of the Act and no attempt whatsoever was made by any local authority or any other authority empowered to do so to demolish the same. It has further been urged that the local authority has treated the hutments to be in existence in an authorised manner. As against this, learned Assistant Government Pleader Shri Uraizee for the respondents has urged that, simply because municipal taxes are levied in respect of the hutments, their construction cannot be treated as authorised in view of the Proviso to Section 139 of the Bombay Provincial Municipal Corporations Act, 1949.

8. It is true that, in view of the aforesaid statutory provision contained in the legislation pertaining to municipal corporations, levy of municipal taxes by itself may not convert an unauthorised structure into an authorised one. However, when the local authority does not take any action for demolition of such unauthorised construction and continues to levy municipal taxes treating the construction to be in existence in an authorised manner, levy of municipal taxes would assume importance in view of the aforesaid ruling of this court in the case of JAYANT PAPER MILLS (supra). Learned Assistant Government Pleader Shri Uraizee for the respondents is right in his submission that except in one case municipal taxation bills for the years prior to coming into force of the Act were not produced before respondent No.2 at the time of processing the declaration in the prescribed form. At this stage, learned Advocate Kum.Shah for the petitioners states at the Bar that she has in her custody several municipal taxation bills with respect to the hutments in question for the years prior to coming into force of the Act. Since the enactment was new and since law has now come to be settled with respect

to the meaning of "vacant land" by the binding rulings of this court as well as those of the Supreme Court, I think it would be in the interests of justice to permit the petitioners to produce the evidence with respect to payment of municipal taxes for the years prior to coming into force of the Act. Whether or not the construction was authorised or could be said to be authorised in absence of any sanctioned plans in the light of the aforesaid ruling of this court in the case of JAYANT PAPER MILLS (supra) is a question of fact and it is better inquired into by respondent No.1 on the basis of the material on record and such other material that may be permitted to be brought on record for the purpose. The matter will have therefore to be remanded to respondent No.2 for the purpose. The impugned orders at Annexures-B and C to this petition will have therefore to be quashed and set aside.

9. In the result, this petition is accepted. The order passed by the Competent Authority at Ahmedabad (respondent No.2 herein) on 17th July 1987 under Section 8 (4) of the Act at Annexure-B to this petition as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad on 7th March 1989 in Appeal No.Ahmedabad-179 of 1987 at Annexure-C to this petition is quashed and set aside. The matter is remanded to respondent No.2 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

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